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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Matthias Pirsch

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OHLANDT, GREELEY, RUGGIERO & PERLE, LLP
ONE LANDMARK SQUARE, 10TH FLOOR
STAMFORD, CT 06901

EXAMINER

ROGERS, DAVID A

ART UNIT

PAPER NUMBER

2856

MAIL DATE

DELIVERY MODE

09/02/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/571,297	Applicant(s) PIRSCH ET AL.	
	Examiner DAVID A. ROGERS	Art Unit 2856	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 August 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-20 is/are pending in the application.
- 4a) Of the above claim(s) 12-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-11, 19 and 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 March 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 C.F.R. 1.114

1. A request for continued examination under 37 C.F.R. 1.114, including the fee set forth in 37 C.F.R. 1.17(e), was filed in this application after a final rejection. As such the finality of the previous Office action has been withdrawn. Claims 1 and 3-20 remain pending. Claims 12-18 remain withdrawn from consideration.

Claim Rejections - 35 U.S.C § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 3, 4, 6, 7, and 9-11 are rejected under 35 U.S.C. 102(a) as being clearly anticipated by Japanese Laid Open Patent Application Publication 9021960 to Yasushi.

Yasushi discloses a chamber (reference item 27) at least partially within with is an analysis device (reference item 22). As seen in figure 6 the housing has a nozzle; i.e., a directing device, located within the chamber at an inlet opening (reference item 28) in the chamber. The flow will be directed to the upper surface and lower surface of sample stage (reference item 24) as evidenced by the flow lines indicated in figure 6. In figure 8 the chamber is provided with an inlet (reference item 5) and an outlet (reference item 6).

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With regard to claim 7 the instant applicant's specification states that condensate-sensitive devices include the lenses of the microscope. The inner optical lenses must be contained within the chamber since the chamber is provided to be around the sample carrier, and the microscope is intended to examine the sample carrier.

With regard to claims 10 and 11 it is noted that the applicant's specification states:

In a particularly preferred embodiment, the housing is configured such that it promotes an optimum flow. Consequently, only a very small quantity of condensate is found at the housing inner wall. Flow optimization can preferably be realized by arranging two adjacent walls at an angle of at least 90° relative to each other."

The chamber of Yasushi has two adjacent walls arranged at an angle of 90°. Therefore, the chamber of Yasushi is configured for optimum flow.

Claim Rejections - 35 U.S.C. § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yasushi as applied to claim 1 above, and further in view of United States Patent 4,931,655 to Yoshida *et al.*

Yasushi teaches a chamber for an analytical instrument. The chamber has inlets and outlets for flowing conditioned media. Yasushi does not teach providing conditioned media to a sample carrier at an angle of between 30° to 60°.

Yoshida *et al.* teaches a device having a climate chamber with a blower (reference item 8) that supplies conditioned media at least partially against a sample support (reference item 7). This inlet portion has an approach angle that appears to be in the range of 30° to 60°. With this nozzle configuration at least 50% of the medium will contact the sample carrier and/or the analysis device.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Yasushi with the teachings of Yoshida *et al.* in order to provide an inlet for directing conditioned media to a carrier when it is desired to control the temperature or provide humidified air to the sample.

6. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yasushi as applied to claim 1 above, and further in view of United States Patent 3,393,032 to Crisler *et al.*

Yasushi teaches a chamber for an analytical instrument. The chamber has inlets and outlets for flowing conditioned (heated) media. Yasushi does not teach the use of temperature sensors.

Crisler *et al.* teaches a climate chamber (reference item 20) having a housing that defines a climate compartment and which holds at least partially a microscope (reference item 90). The climate chamber is provided with inlet ports (reference item 75) and outlet ports (reference item 80) for allowing a medium to flow through the climate chamber. As configured the lenses of the microscope in the device of Crisler *et*

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al. are located in the flow of the medium that circulates through the chamber. Crisler *et al.* also teaches the use of temperature sensors. See column 3 (lines 14-28). The temperature sensor, when used in the chamber, will be near the carrier that holds the sample being examined using the microscope.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Yasushi with the teachings of Crisler *et al.* in order to use temperature sensors in order to monitor the temperature of the heated media in the chamber.

7. Claims 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yasushi in view of Yoshida *et al.*, Crisler *et al.*, and United States Patent 3,907,389 to Cox *et al.*

Yasushi discloses a chamber (reference item 27) at least partially within with is an analysis device (reference item 22). As seen in figure 6 the housing has a nozzle; i.e., a directing device, located within the chamber at an inlet opening (reference item 28) in the chamber. The flow will be directed to the upper surface and lower surface of sample stage (reference item 24) as evidenced by the flow lines indicated in figure 6. In figure 8 the chamber is provided with an inlet (reference item 5) and an outlet (reference item 6). The instant applicant's specification states that condensate-sensitive devices include the lenses of the microscope. The inner optical lenses must be contained within the chamber since the chamber is provided to be around the sample carrier, and the microscope is intended to examine the sample carrier. Yasushi does not teach an inlet for delivering conditioned media at between 30° to 60°.

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Yoshida *et al.* teaches a device having a climate chamber with an blower (reference item 8) that supplies conditioned media at least partially against a sample support (reference item 7). This inlet portion has an approach angle that appears to be in the range of 30° to 60°. With this nozzle configuration at least 50% of the medium will contact the sample carrier and/or the analysis device.

Yasushi does not teach a chamber having a first plurality of sidewalls and a second plurality of sidewalls.

Crisler *et al.* teaches a glovebox-based climate chamber (reference item 20) having a housing that defines a climate compartment and which contains, at least partially, a microscope (reference item 90). Cox *et al.* teaches that known glovebox-based chambers can have a plurality of first and second sidewalls.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Yasushi with the teachings of Yoshida *et al.*, Crisler *et al.*, and Cox *et al.* in order to provide a chamber having a microscope and a plurality of sets of sidewalls in order to allow the chamber to be reduced size and/or shape.

With regard to claim 20 the size and orientation of the sidewalls is a matter of preferred design and would have been obvious to one of ordinary skill in the art in order to reduce the overall size and/or shape of the chamber. See *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966).

Response to Arguments

8. Applicant's arguments with respect to claims 1, 2-11, 19, and 20 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID A. ROGERS whose telephone number is (571)272-2205. The examiner can normally be reached on Monday - Friday (0730 - 1600). If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron E. Williams can be reached on (571) 272-2208. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/David A. Rogers/
Primary Examiner, Art Unit 2856